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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

INVENTOR: Dillis V. Allen)
INVENTION: IMPROVED GOLF CLUB FACE)
FLEXURE CONTROL SYSTEM) EXAMINER: S. Blau
SERIAL NO: 09/614,107) ART UNIT: 3711
FILED: 7-12-00)

Assistant Commissioner of Patents
and Trademarks
Washington, D.C. 20231

ATTENTION: Group Director John E. Kittle
Group 3700 - Room 3A19

PETITION TO COMMISSIONER UNDER 37 CFR 1.181(a)(3)
TO INVOKE SUPERVISORY AUTHORITY

Honorable Sir:

This is a Petition under the provisions of 37 CFR 1.181(a)(3) for the Commissioner to exercise his supervisory authority over the Examiner in connection with a grossly premature final rejection dated February 19, 2003. In applicant's counsel's some 40 years of practice before the Patent Office, has he seen a more egregious case of a premature final rejection.

There are seven new objections and rejections contained in the final Office Action which is believed in part to be due to the fact that the Examiner issuing the penultimate Office Action of July 16, 2002, is a different Examiner than Examiner Blau, the author of the final action.

It is not unusual for a newly assigned Examiner, especially one with the experience of Mr. Blau, to view the issues differently than a prior Examiner. However, this is not a justification for issuing a final action containing seven completely new objections and rejections.

The seven new objections and rejections are as follows:

1. "The specification is objected to under 37 CFR article 1.71 for not being written in an exact way to enable one skilled in the art to make or use the same. Specifically it is uncertain how to make the face wall interchangeable as stated on page 32 lines 1-5.

2. The drawings are objected to under 37 CFR 1.83(a). The drawings must show every feature of the invention specified in the claims. Therefore, the interchangeable face walls in claims 10-12 must be shown or the feature(s) canceled from the claim(s). No new matter should be entered.

3. Claims 1-9 and 20 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. Claims 1, 4, and 20 are indefinite in that the claims states, 'said

secondary planar wall ... solely supported on the perimeter wall, ... face wall being fixed adjacent the perimeter of the second wall'.

4. Claims 10-12 are rejected under 35 U.S.C. 112, first paragraph, as containing subject matter which was not described in the specification in such a way as to enable one skilled in the art to which it pertains, or with which it is most nearly connected, to make and/or use the invention. It is uncertain how the face walls are interchangeable in claims 10-12.

5. Claim 10 is rejected under 35 U.S.C. 103(a) as being unpatentable over Elmer in view of Shaw, Dill, and Werner.

6. Claim 11 is rejected under 35 U.S.C. 103(a) as being unpatentable over Elmer in view of Shaw, Dill and Werner as applied to claim 10 above, and further in view of McKeighen.

7. Claims 10 and 12 are rejected under 35 U.S.C. 103(a) as being unpatentable over Lu in view of Elmer, Shaw and Werner."

The rejection of Claim 10, item 5 above, as being unpatentable over the Elmer, U.S. Patent No. 5,509,660, in view of the Shaw, U.S. Patent No. 5,362,047, the Dill, U.S.

Patent No. 6,102,813, and the Werner, U.S. Patent No. 6,152,833, is completely off the wall. Not one of these references was cited in the history of this application prior to the final rejection.

The only previous rejection of Claim 10 is contained on page 10 of the Office Action of July 16, 2002:

"14. Claims 4-9, 10-12 and 20 are rejected under 35 U.S.C. 103(a) as being unpatentable over Lu in view of Allen '791(Allen) and either Chou or Kosmatka '547(Kosmatka)."

There is absolutely no relationship between this rejection of Claim 10 and the rejection set forth in paragraph 14 of the previous Office Action.

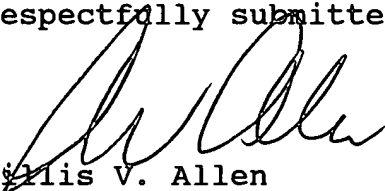
It is true that in the Amendment filed January 21, 2003, Claim 10 was amended to include the word "interchangeable", and this might be some justification for the new objections 1 and 2, and the amendment of Claims 1 and 4 to include the term "solely supported" in the Amendment filed on January 21, 2003, might provide some justification for the rejection in paragraph 3 above, as well as the new rejection in paragraph 4 above, but there simply is no justification for the rejection of Claims 10 and 11, as well as Claim 12(paragraph 6 above) over five newly cited references.

MPEP 706.07(a) provides: "Under present practice, second or any subsequent actions on the merits shall be final, except where the examiner introduces a new ground or rejection that neither necessitated by applicant's amendment of the claims nor based on information submitted in an information disclosure statement filed during the period set forth in 37 CFR 1.97(c) with the fee set forth in 37 CFR 1.17(p)."

These five new references certainly cannot be justified simply by the addition of the word "interchangeable".

For the above reasons, it is respectfully requested that the Commissioner, through the Group Director, compel the Examiner to withdraw the final action of February 19, 2003, and provide applicant the opportunity and right to amend the Claims to overcome these new rejections.

Respectfully submitted,



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